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UNCLAS SECTION 01 OF 04 MADRID 001161

SENSITIVE  
SIPDIS

STATE FOR EUR/WE AND EEB/TPP/IPE  
STATE PASS USTR FOR D.WEINER AND J.GROVES  
STATE ALSO PASS U.S. COPYRIGHT OFFICE FOR M.PALLANTE AND  
M.WOODS  
COMMERCE FOR 4212/DON CALVERT  
COMMERCE ALSO FOR PTO

E.O. 12958: N/A  
TAGS: [KIPR](#) [PGOV](#) [SP](#)  
SUBJECT: SPAIN: GOVERNMENT'S PROPOSED ANTI-INTERNET PIRACY  
LEGISLATIVE MEASURES GENERATE CONTROVERSY

REF: A. MADRID 1152  
[1](#)B. MADRID 1137  
[1](#)C. MADRID 1052

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#### SUMMARY

[1](#)1. (U) On November 27, Spain's Council of Ministers approved for submission to Congress a draft Law for a Sustainable Economy (LES), designed to modernize and restructure the economy to make it more competitive. Septel will address the law's scope and major provisions. One aspect of the draft legislation proposes amending existing intellectual property laws to facilitate government action to deter Internet piracy. Rights-holders generally support the proposals as a first step towards reducing Internet piracy, though music industry representatives have expressed disappointment that the government did not go further. All political parties except the ruling Socialists have expressed opposition to the measures. Internet users' associations have reacted with shrill denunciations. A manifesto harshly critical of the government's proposals that appeared on the Internet early on December 2 has reportedly garnered tens of thousands of adherents. Opponents have announced plans to demonstrate December 4 in Madrid and other cities. The Minister of Culture met with a group of Internet experts in an effort to restore calm, and the Presidency put out a clarifying press release. However, in a December 3 press conference, President Zapatero denied any intention on the part of the government to close websites and intimated that the draft provisions may be rewritten. Two Vice Presidents and the Minister of Justice also made comments that left the government's ultimate intentions unclear. End Summary.

#### NEW LEGISLATION PROPOSED

[1](#)2. (U) The anti-Internet piracy provisions anticipate recommendations that the government's Inter-Institutional Commission (see reftels) is mandated to forward to the government by December 31. According to Salvador Soriano, Deputy Director for Information Society Services in the Secretariat for Telecommunications and the Information Society (SETSI), the Commission reached consensus on the need for these legislative changes and decided to attach them to the best available legislative vehicle instead of waiting until the end of the year. The legislation seeks to amend Law 34 of 2002, the Law on Information Society Services and

Electronic Commerce (LSSI), and Royal Legislative Decree (RLD) 1 of 1996 , which incorporates the Law on Intellectual Property (LPI), in ways designed to provide more protection for IPR on the Internet. The primary change would be to expand the scope of Article 8 of LSSI.

¶3. (U) LSSI Section 8.1 empowers "competent organs" to take the necessary measures against an "Information Society service" that it finds to be acting to the detriment certain interests. These include national defense, public order (including criminal investigation), public safety, public health, consumer and investor protection, respect for personal dignity and non-discrimination, and protection of minors. In such cases, the competent organ may order the service interrupted or the damaging material removed. Final Disposition 1 of the draft LES proposes to add "safeguarding intellectual property rights" to this list of interests that could justify interrupting service or removing offending material. It then adds a new Section 8.2 granting the "competent organ" the authority to identify persons responsible for IPR-infringing activity - site owners, executives, or administrators - by asking Internet Service Providers (ISPs) for the information, and requires the ISPs to comply with such requests.

¶4. (U) In support of these measures, LES would also amend the RLD 1 to expand the jurisdiction of an existing Intellectual Property Commission affiliated with the Ministry of Culture. This Commission is responsible for mediating and arbitrating IPR-related disputes. The draft law would establish a "Second Section" of the Commission as the "competent organ" under LSSI Articles 8 and 11 (which requires service providers to cooperate with such entities). Rules for naming members of the Second Section, as well as its specific functions and procedures, are to be addressed by a separate

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regulation.

¶5. (U) According to government officials, the Second Section would act not on its own initiative but in response to complaints about websites that make copyright-protected content available without authorization. It would examine such complaints while respecting "the maximum guarantees of inherent rights and principles," requesting of the ISPs such information as "addresses and ownership of websites" but not personal data. Its objective would be the "re-establishment of legality via the removal of content disseminated without authorization."

#### TARGETING THE "SUPPLY SIDE" OF PIRACY

¶6. (U) Culture Minister Angeles Gonzalez-Sinde and Industry, Tourism, and Trade Minister Miguel Sebastian have stressed on numerous occasions that the government will not target individual users nor criminalize activities such as downloading or file-sharing via peer-to-peer (P2P) programs. The LSSI language allows the government to interrupt "an Information Society service," i.e., a website but not an individual user's account. The government thus disavows any intention to implement a graduated response regime such as contemplated in recently enacted legislation in France. Their specific intent is rather to impede access to infringing content. The Coalition of Creators and Content Providers has identified some 200 "commercial scale" websites (ref C) that allegedly either house or link to such content and that will no doubt be among the first targets of the Second Section if and when Congress passes the LES.

#### CONTENT PROVIDERS GENERALLY POSITIVE, SERVICE PROVIDERS MUM

¶7. (U) Some rights-holders - especially representatives of the music industry - argue that this limitation will leave users free to continue to engage in unauthorized P2P downloading and thus will not significantly deter piracy. They are especially concerned that the government is not

seeking to address Internet users' underlying attitude or behavior, which they see as key to reducing piracy. However, Coalition spokesmen and representatives of several of its constituent organizations have expressed support for the legislative proposal as a step in the right direction.

8.(U) While many content providers wish the government would go further, they also believe these measures probably represent the most that can be achieved at this point and that accepting them will enhance rights-holders' ability to press the government for more stringent measures in the future. Jose Manuel Tourne of the Federation for the Protection of Intellectual Property in Audiovisual Works (FAP) said the measures could help transform an environment in which a substantial segment of the population currently believes (or affects to believe) that anything goes on the Internet. He also expressed hope that amending the Internet IPR legislative regime would lead the Prosecutor General's Office (Fiscalia) to modify its Circular 1 of 2006, which has led to much misunderstanding and some adverse judicial decisions.

9. (SBU) Neither the Internet Service Providers' (ISPs) association, Redtel, nor its constituent companies - Telefonica, Orange, Vodaphone, and Ono - have commented thus far on the government's proposal. Some press reports suggest the ISPs were caught by surprise and are dismayed. However, SETSI Deputy Director Soriano, who works in a Secretariat that maintains close ties with telecoms, said these measures had been under consideration for some time and the ISPs knew they were coming. They were discussed in on-again, off-again negotiations between the Coalition and Redtel. When these talks failed to reach fruition, the government decided to move ahead unilaterally. In the past year, both Redtel and its most influential member, Telefonica, have stated publicly that if the government wants to combat Internet piracy, it should legislate, and service providers will obey the law. It remains to be seen whether the ISPs will support or oppose these proposals.

OPPONENTS DECRY CENSORSHIP, ABUSE OF DUE PROCESS, GOVERNMENT OVERREACH

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10. (U) Reaction from the Association of Internet Users ("Internautas") and like-minded organizations, however, was immediate and vocal. On the morning of December 2, a 10-point Manifesto in Defense of Fundamental Rights on the Internet appeared on the Internet and in the first two days had reportedly gained tens of thousands of adherents. The Manifesto argues that "copyright cannot be placed above citizens' fundamental rights such as privacy, security, the presumption of innocence, effective judicial protection, and freedom of expression." Its authors decry the empowerment of an administrative entity to do judges' work, and claim that bypassing the judicial system violates due process. They protest that the measures, if approved, will damage the technology sector and inhibit new cultural creation on the Internet, and further argue that content providers should abandon their obsolete business model and seek new ways to profit from their work on the Internet.

11. (U) Several attorneys specializing in telecommunications and Internet law published op-eds opposing the measures, arguing that websites should not be shut down without a judicial order. An opinion piece in daily El Mundo by self-proclaimed "Surfer's Lawyer" Carlos Sanchez Almeida, entitled "Closing Websites: The Sinister Second Section," denounces "the systematic contempt with which our political class treats the judicial power." Sanchez further argues that the proposed amendments to the LSSI represent governmental overreach and open the door to a variety of potential abuses. A headline in daily of record "El Pais" proclaimed the birth of an "Internet cultural police," while El Publico's headline quotes an attorney as saying that "The

door to censorship on the Web has opened." Other commentators were somewhat more measured, noting that the EU telecom package recently approved by the European Parliament will not require a court order for cutoff of Internet access, but rather "a fair and impartial process that includes the user's right to be heard," and note that the proposed measures are considerably less severe than those in place in the UK, France, and Germany. A few columnists questioned what all the fuss was about if the government wanted to shut down operations that were openly distributing stolen goods.

¶12. (U) Opposition parties and some small parties nominally allied with the government unanimously criticized the proposed anti-Internet piracy proposals. Perhaps most significantly, a spokesman for the main opposition Popular Party (PP) accused the government of proposing the creation of a cultural police force that would "bring back censorship" and turn the Minister of Culture into "the Big Brother of the Internet." He added that "a revolution is being forged on the Internet against the government, and we have to pay attention as if it were taking place in the streets." The PP official likened suspension of websites to "governmental kidnapping of a communications medium." The United Left (IU) declared itself "belligerent" with respect to the proposals and argued that links to unauthorized content are in fact legal. Weakened by the economic crisis, the government has no stable majority in Congress and will need to round up votes from smaller parties to pass this law. Passage of the LES is a high priority of President Zapatero, who describes it as reorienting the Spanish economy to a more sustainable model. The government is expected to ask Congress to address the legislation expeditiously.

#### GOVERNMENT INTENTIONS UNCLEAR

¶13. (U) Culture Minister Gonzalez-Sinde appeared in the Senate December 2 to explain the proposals and met on December 3 with a group of bloggers, journalists, and Internet professionals and experts who asked her to remove the proposals from the draft legislation. After a two-hour debate, the Minister reiterated that the government intends to move ahead. President Zapatero's office (Moncloa) issued a press release to explain and clarify various aspects of the proposed measures, noting they are fully compatible with the EU telecom package. Moncloa cited the importance of IPR protection to the continued development of Spain's essential cultural industries as a motive force behind the initiative, and called piracy an act of illegal competition. Moncloa also promises that affected parties will be able to appeal to

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judges if they believe their Constitutional rights are being abridged by the IPR administrative process.

¶14. (U) In a conversation with Econoff, SETSI Deputy Director Soriano said the strident opposition was to be expected and would not deter the government from moving the legislation forward on a priority basis. Likewise, Carlos Guervos, Deputy Director for Intellectual Property at the Ministry of Culture, asked about the manifesto and other shrill commentary, quoted the proverb that "the dogs bark but the caravan moves on," and added that now was the time for his Ministry "not to go wobbly."

¶15. (U) At a press conference late on December 3, President Zapatero appeared to distance himself from the legislative proposal, saying that "Nothing will be closed, no web and no blog. If the draft law has been interpreted (as containing) some possibility of closing one of the spaces of the sites that is on the web, I'm telling you now that there's no way. If something needs to be cleared up about the wording, it will be done...and of course, I'm giving my opinion, freedom of expression will always prevail." Zapatero went on to express support for strong government action to protect intellectual property, "because if we don't, we'll be without intellectual strength, without intellectual creation." First

Vice President Maria Teresa Fernandez de la Vega stated that "there has always been judicial control and there always will be," suggesting that the government may seek to replace the Second Section's administrative review with a judicial process. Justice Minister Francisco Caamano said the closing of websites should include "judicial authorization and control." Further confusing the matter, Second Vice President (and Minister of Economy and Finance) Elena Salgado said the Congress could try to "perfect" the draft legislation but that "a judicial order is necessary to shut down Internet access but not to suspend it." One contact told us that the Council of Ministers will address the controversy and the draft legislation during their weekly meeting today.

#### COMMENT

¶16. (SBU) As this debate continues to unfold, post notes that on December 3, the Ministry of Health and Social Policy reportedly began the process of taking down four websites for selling medication illegally and without prescription. The Health Ministry's actions appear uncontroversial. Government authorities take action every day that in some way regulates or restricts Internet activity, and the society seems no less open for their efforts. At the same time, distrust of the government's good intentions and of its ability to deliver good results run high. Thus, fears of censorship and invasion of piracy, while expressed in this instance in alarmist and scare-mongering fashion, remain very real to some. The government faces a serious challenge in trying at long last to undertake concrete measures to protect IPR online, and the outcome is uncertain. End Comment.  
CHACON